***THE HON'BLE SRI JUSTICE P.S. NARAYANA**

+W.P.No.12279 of 2007

% 21-07-2006

Jinka Pushpalatha w/o. Tirupathi, aged 22 years, r/o. Lingareddipally village, Siddipet Mandal, Medak Dist.

..... PETITIONER

Vs.

$ The Revenue Divisional Officer, Siddipet, Medak District and another

.....RESPONDENTS

<GIST:

>HEAD NOTE:

! Counsel for the petitioner : Sri K.Raghuveer Reddy

^ Counsel for respondents : Government Pleader for Civil Supplies.

?CASES REFERRED :

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.12279 of 2007

Dated: 21.09.2007

Between:

Jinka Pushpalatha.

.. Petitioner

And

The Revenue Divisional Officer,
Siddipet, Medak District,
and another.

.. Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.12279 of 2007

ORDER:

The matter is coming under the capation "interlocutory". Counter affidavit is filed on behalf of the respondents. At the request of Sri K.Raghuveer Reddy, learned counsel for the petitioner, and also the learned Assistant Government Pleader for Civil Supplies, the matter is being disposed of finally.

2. It is stated that notice had been served on the 2nd respondent and none represents the 2nd respondent.

3. The only question, which had been argued in elaboration, is that the impugned order was made without considering the explanation submitted by the writ petitioner. However, the learned Assistant Government Pleader for Civil Supplies had taken this Court through the contents of the counter affidavit and would submit that after due enquiry only, the impugned order was made and the same is in accordance with law.

4. The writ petition is filed for a writ of Mandamus or any other appropriate Writ or Writs, Order or Direction, declaring and setting aside the proceedings dt.4.6.2007 in Pro.No.B/971/2006 on the file of the first respondent, as illegal, arbitrary, without jurisdiction and violative of principles of natural justice and to pass such other suitable order.

5. In the affidavit filed in support of the writ petition, the petitioner

stated that on 20.04.2007, the 1st respondent herein was pleased to notify a vacancy of Fair Price Shop Dealer for Fair Price Shop No.2 of Lingareddipally Village in Siddipet Mandal of Medak District, calling for applications from eligible women candidates. The petitioner and the 2nd respondent herein were the only candidates who have applied for the said dealership. Interview was conducted on 4.5.2007 and the petitioner, being the native of village, was selected as Fair Price Shop Dealer for F.P.Shop No.2 of the said village vide proceedings dt.4.5.2007 in File No.B/1807/2007.

6. It is also stated that questioning the same, the 2nd respondent herein seems to have filed a representation before the 1st respondent on 7.5.2007 stating that the petitioner herein was married to one Sri Tirupathi, who is a resident of Nasarpura Street in H.No.10-4-76/1, Siddipet Town, and hence, she was disqualified from being appointed as fair price shop dealer, as per APSPDSC Order 2001. The 1st respondent herein has readily accepted the said representation and issued show cause notice to the petitioner on 19.05.2007 vide Proc.No.B/971/2006 calling upon her to show cause as to why her selection as fair price shop dealer for Fair Price Shop No.2 of the said village should not be cancelled. To the said notice, the petitioner filed her reply on 26.05.2007 stating that she is residing in Lingareddipally village, Siddipet since more than 15 months and the voter list of Lingareddipally village clearly show that she is a resident of Lingareddipally village and that her name figures at Sl.No.1145 of Polling Station No.136. She also produced a copy of her Savings Bank Account passbook in the Post Office of Lingareddipally village and also list of beneficiaries under Indiramma Housing Scheme issued by A.P.State Housing Corporation Limited, Medak, wherein her name

figures at Sl.No.25. She further stated in her reply that the complaint given by the 2nd respondent was false and frivolous and the same is made only to oust her from the fair price shop dealership and to grab the same.

7. The petitioner further stated that it is true that she was married to one Sri Tirupathi, who is a resident of Nasarpura Street of Siddipet Town, but in view of disputes with her husband's brother, they have left the said place and residing at Lingareddipally village for the last more than 15 months, and thereafter, her name also figured in the voters' list of the said village. In view of the same, she became permanent resident of Lingareddipally village, and hence, she is fully eligible and qualified to hold the authorization of F.P.Shop No.2 of the said village. She also stated that, this apart, she is selected by the 1st respondent only after due enquiry that she belongs to Lingareddipally Village. However, without considering her application, the 1st respondent passed the impugned order dt.4.6.2007 in Proc.No.B/971/2006, canceling her selection and appointing the 2nd respondent herein as fair price shop dealer. She also stated that the impugned order is issued without even referring to her explanation, by stating that she is a resident of Nasarpura Street in Siddipet Town and that her name is included in the voters' list there, and that she also obtained a ration card at Nasarpura Street, Siddipet. The impugned proceedings are challenged in the present writ petition.

8. It is also stated by the petitioner that the impugned order issued by the 1st respondent is illegal and arbitrary. It is true that her name is included in 2005 Voters' List of Nasarpura Street, Siddipet, but since more than 15 months, she is residing in Lingareddipally village. It is also true that a ration card was obtained by the petitioner at Nasarpura

Street, Siddipet and an application made by her for transfer of said ration card to Lingareddipet village is yet to be considered. In any case, this cannot be a ground to declare her as ineligible candidate to hold the post of Fair Price shop dealer of Lingareddipally village. The Panchayat Secretary of Lingareddipally village has also issued a Certificate on 6.12.2006 which was enclosed to the application made for grant of authorization showing that she is the resident of Lingareddipally village. All these facts would amply prove that she is resident of Lingareddipally village in Siddipet Mandal of Medak District, but not Nasarpura Street of Siddipet, as alleged in the impugned order. In any event, the petitioner submits that the 1st respondent herein lacks jurisdiction to set aside his own earlier proceedings wherein she was appointed as Fair Price Shop Dealer for F.P.Shop No.2 of Lingareddipally village and that he cannot review his own order and the said order was appealable. The 2nd respondent did not file any appeal questioning the appointment of the petitioner as Fair Price Shop Dealer. Further, the 1st respondent did not even refer to the reply of the petitioner before passing the impugned order and did not consider the explanation offered by her. Hence the impugned order is in violation of principles of natural justice. On this ground alone, the impugned order is liable to be set aside and it cannot stand to legal scrutiny, hence, the petitioner approached this Court.

9. It may be appropriate to have a look at the impugned order, which reads as hereunder:

> "The post of fair price shop Dealer, Shop No.II of Lingareddipally (v) Siddipet (M) has been fallen vacant due to resignation of the existing dealer vide proceedings 2nd cited. Hence, notification was issued on 20-4-07 in reference 3rd cited, calling applications from women (BC) candidates to fill up the vacancy duly conducting interview. In pursuance to the said notification, Smt. Samaleti Annapurna W/o Ashok and Smt. Jinka

Pushpalatha D/o Narsimulu have submitted their applications. Interview was conducted on 4-5-2007 and Smt. J.Pushpalatha was declared as provisionally selected for the post of dealer. Subsequently, Smt. S. Annapurna W/o Ashok has represented that the said selected candidate is not the resident of Lingareddipally village and she is residing at Nasarpura of Siddipet town and not eligible for selection as fair price shop dealer for Lingareddipally (v). Hence, show cause notice in the reference 5th cited was issued to Smt. J.Pushpalatha and the matter has been got enquired.

Smt. J.Pushpalatha D/o Narsimulu has appeared before the under signed on 2-6-2007 and deposed that the residence of her parents is Lingareddipally (v) land, she has been got married (4) years back. Her name is included in the voter list of Nasarpura, Siddipet town and ration card also obtained at Nasarpura of Siddipet town. During the enquiry, it is revealed that she is the R/o 10-4-76/1, Nasarpura, Siddipet and obtained and produced false nativity certificate of Lingareddipally (v) with a malafide intention for appointment as fair price shop dealer. As per the condition No.(5) of notification dt.20-4-2007, the candidate for appointment as fair price shop dealer must be the resident of the concerned village/gram panchayath. Since, Smt.J.Pushpalatha W/o Tirupathi is not the resident of Lingareddipally (v) and as such is not eligible for selection/appointment as fair price shop dealer, Lingareddipally, Shop No. II under the provisions of APS PDS Control Order, 2001, and hence her provisional selection as per the interview conducted on 4-5-2007 is hereby cancelled.

Smt. S.Annapurna W/o Ashok who had also attended the interview on 4-5-2007 and found eligible is hereby selected for appointment as fair price shop dealer, shop No.II of Lingareddipally (v) of Siddipet (M). Appointment orders will be issued separately."

10. In the counter affidavit filed on behalf of the respondents, it is stated that the fair price shop No.2 of Lingareddipally (v) of Siddipet (M) has fallen vacant due to resignation of the existing fair price shop dealer

vide this office Proc.No.B/971/06, dated 23-9-2006, hence, notification No.B/971/06, dated 20-4-2007, has been issued calling applications from eligible Backward Community women candidates to fill-up the post. Two applications i.e., from petitioner herein and respondent No.2 herein have been received and interview was conducted on 4-5-2007. During the interview, the petitioner herein was provisionally selected as fair price shop dealer No.2 of Lingareddipally (v) subject to the verification of qualifications for eligibility and antecedents.

11. It is also stated that Smt. Samaleti Annapurna, the 2nd respondent herein, has submitted a representation on 07-05-2007 stating that the petitioner herein was married 4 years back and residing with her husband Sri Boini Tirupathi in H.No.10-4-76/1, Nasarpura street at Siddipet and obtained fraudulent certificates and has got selected for the post of fair price shop dealer No.2 of Lingareddipally (v). On receipt of the said representation, the matter has been got enquired into vide issuing show cause notice to both the petitioner and respondent No.2 herein. During the enquiry, it is revealed that the petitioner herein is residing in H.No.10-4-76/1, Nasarpura Street at Siddipet town with her husband Sri Boini Tirupathi and accordingly, her name was enrolled in the voter list for the year 2004 and admittedly, she has been issued house hold supply card over the said address. As per the certificates of caste, income and local candidate obtained by the petitioner herein in the month of December, 2006, it is evident that the said certificates have been obtained mentioning the name of her father i.e., Narsimulu instead of her husband i.e., Tirupathi showing the address of her father at Lingaredipally village of Siddipet Mandal fraudulently. The existing dealer has resigned as per this office proceedings, dated 23.9.2006, and the petitioner herein has obtained the said certificates subsequently on 6.12.2006 mentioning the name of her father and the address of her

father residing at Lingareddipally village, which shows her malafide intention, to obtain the post of fair price shop dealer No.2 illegally. After considering reply submitted to the show cause notice and as per the documentary evidence, it is revealed that the petitioner herein is not the resident of Lingareddipally village. As per the condition No.5 of notification, Dated 20-4-2007, the candidate for appointment as fair price shop dealer must be the resident of the concerned village/Gram Panchayath, hence, the provisional selection of the petitioner herein as fair price shop dealer shop No.2 of Lingareddipally village has been cancelled while selecting the remaining other candidate, who appeared for interview, i.e., the second respondent herein vide Proc.No.B/971/06, dated 04-06-2007 as per the provisions of the APSCSC Control Order 2001, hence the averments made by the petitioner are contrary.

12. It is also further stated that admittedly the petitioner is residing at Nasarpura and obtained those certificates showing the name of her father and the address of her father at Lingareddipally village fraudulently for the purpose of appointment as fair price shop dealer with a malafide intention. She has also opened a post office account on 08-05-2007 i.e., after filing of complaint by the second respondent herein on 07-05-2007, which also shows a malafide intention for the purpose of this case. The petitioner herein has been got selected provisionally on 04-05-2007 subject to the verification of eligible qualification and other conditions under APSCSC Control Order, 2001 and was not issued appointment orders, and hence, the cancellation of her selection at a later stage who is found in-eligible is legal and as per the jurisdiction of the 1st respondent herein. The selection of the petitioner was cancelled duly considering her representation submitted on 26-05-2007 in reply to the show cause notice and other in-eligible qualifications vide Proc.No.B/971/06, dated 04-06-2007, and thus, prayed to dismiss

the writ petition.

13. In the light of the respective stands taken by the parties and also the impugned order specified supra, the question to be decided is whether in the facts and circumstances, the impugned order can be sustained. The explanation, dated 26.05.2007, submitted to the Revenue Divisional Officer, Siddipet is placed before this Court. In the said explanation, it is stated as hereunder:-

> "I Jinka Pushpalatha D/o. Narsimlu R/o Lingareddypally, Mandal Siddipet, District Medak. My explanation to your show cause notice that I am residing from the past 15 months at Lingareddypally village and I also selected of Ration Dealer, but somebody has complaint that I am the non local person. Basing on that you are issued show cause notice to me. For that purpose I am submitting following documents.
>
> 1) As per voter list P.S.No.136 Sl.No.145 shows my name i.e., Jinka Pushpalatha W/o Tirupathi H.No.2-80 R/o Lingareddypally village.
>
> 2) Saving Account No.1704555 in Lingareddypally Post Office.
>
> 3) S.No.25 in Housing List which shows my name."

14. On a careful scrutiny of the explanation submitted, the documents appended to the explanation and also the contents of the impugned order, this Court is of the considered opinion that the explanation submitted in the writ petition had not been taken into consideration. May be that the concerned authority might have made an enquiry, but however, when the impugned order does not reflect the consideration of the material placed along with the explanation to the show cause notice, this Court is of the opinion that such reasons cannot be supplemented, since the impugned order to be read as it is.

15. In the light of the same, the impugned order is hereby quashed. It is needless to say that the 1st respondent is at liberty to consider the explanation of the petitioner along with the documents submitted by her and pass appropriate orders in this regard.

16. Accordingly, the writ petition is allowed to the extent indicated above. No order as to costs.

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(P.S.NARAYANA,J)

L.R.copy to be marked.

Dt.21.09.2007
Note: Furnish CC in three days
B/o
v v